

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANTHONY J. SCICCHITANO, JR.,)	
Plaintiff,)	2:15cv552
)	Electronic Filing
v.)	
)	Judge David Stewart Cercone/
THOMAS H. COOKE <i>Asst Public Def</i> ;)	Chief Magistrate Judge Maureen P. Kelly
ADG TRACI MCDONALD; JANET)	
MASCHETTA BELL,)	
Defendants.)	

MEMORANDUM ORDER

The above-captioned prisoner civil rights complaint was received by the Clerk of Court on April 28, 2015, and was referred to Chief United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72 of the Local Rules for Magistrate Judges.

The Magistrate Judge's Report and Recommendation (the "Report"), ECF No. 8, filed on June 3, 2015, recommended that the Complaint be dismissed pre-service pursuant to the Prison Litigation Reform Act for failure to state a claim upon which relief can be granted based upon the case being barred by Heck v. Humphrey, 512 U.S. 477 (1994) or by the two-year statute of limitations. Service of the Report was made on the Plaintiff at his address of record. Plaintiff was given until June 22, 2015, to file any objections. Instead of objections, Plaintiff filed a Motion to Amend his Complaint along with a request for a 90 day extension of time in which to file objections. ECF No. 9. On June 24, 2015, the Chief Magistrate Judge denied for the Motion for the most part but did permit Plaintiff until July 24, 2015, in which to file his objections. Since the June 24, 2015 Order by the Chief Magistrate Judge, Plaintiff has filed correspondence

with the Court as well as medical records (collectively, “the Filings”). ECF Nos. 11 - 15. None of the Filings were specifically entitled “objections.” However, it is now July 27, 2015, and no filing labeled “Objections” has been received to date. Accordingly, we will treat the Filings as Plaintiff’s objections and proceed accordingly.

The Court finds that none of the Filings, treated as objections, merit rejection of the Report or extended comment.

The Filings all support Plaintiff’s claim that either he was mentally incompetent at the time of his state trial or there was sufficient evidence of such that the state trial court was constitutionally obligated to sua sponte order a mental competency exam. Plaintiff specifically complains in the Complaint that because he was not evaluated, his trial violated his federal rights. ECF No. 5 at 10 (in response to a question on the form Complaint of what federal law do you claim was violated, Plaintiff wrote: “My right to a mental evaluation do [sic] to my illness[.]”)

The Report found Plaintiff’s claims were barred by Heck. Plaintiff’s Filings do nothing to respond to that finding or to undermine the applicability of Heck. If anything, Plaintiff’s Filings confirm the correctness of the Report’s reliance on Heck.

Nor do Plaintiff’s Filings undermine the alternative ground that the case is barred by the statute of limitations, if not barred by Heck.

Accordingly, after *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 31st day of July, 2015;

IT IS HEREBY ORDERED that the Complaint is dismissed with prejudice pursuant to the Prison Litigation Reform Act for failure to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED that the Report and Recommendation, ECF No. 8, filed on June 3, 2015, by Chief Magistrate Judge Kelly, is adopted as the opinion of the Court. The Clerk is to mark the case closed.



David Stewart Cercone
United States District Judge

cc: The Honorable Maureen P. Kelly
United States Magistrate Judge

Anthony J. Scicchitano, Jr.
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(*Via First Class Mail*)